

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the Advanced Wireless)	WT Docket No. 12-357
Services H Block—Implementing Section 6401)	
of the Middle Class Tax Relief and Job Creation)	
Act of 2012 Related to the 1915-1920 MHz and)	
1995-2000 MHz Bands)	

COMMENTS OF UTAM, INC.

UTAM, Inc. herewith submits its comments in response to the above-captioned Notice of Proposed Rulemaking.¹ In this Notice, the Commission proposes rules for the Advanced Wireless Services (“AWS”) H Block that would make available 10 MHz of spectrum for flexible use. While UTAM generally supports the proposed H Block spectrum allocation and urges a rapid conclusion to the proceeding, UTAM’s comments are limited to support for the Notice’s proposal to require H Block licensees to pay a *pro rata* share of expenses previously incurred by UTAM in clearing incumbents from the spectrum.² The repayment proposal would ensure that UTAM receives full reimbursement after the initial H Block auction and enable UTAM to finally shut down its operation.

I. BACKGROUND

UTAM is the non-profit, FCC-designated frequency coordinator for the unlicensed Personal Communications Service (“UPCS”) band. UTAM was created to facilitate a joint

¹ Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, WT Docket No. 12-357, *Notice of Proposed Rulemaking*, FCC 12-152, (rel. Dec. 17, 2012) (“*Notice*”).

² *Notice* at ¶ 3.

clearing of microwave users from the UPCS band and maximize deployment of UPCS devices. As a result of UTAM's efforts over the past 16 years, no incumbent microwave users lawfully operate in the 1910-1930 MHz band.

UTAM incurred significant costs in clearing incumbents from the PCS band. The costs for clearing the 1910-1930 MHz band were originally to be recovered from membership fees and per-device fees associated with the sale of UPCS products. However, in 2004, the FCC reallocated the 1910-1920 MHz band from UPCS.³ The 1910-1915 MHz band, along with the 1990-1995 MHz band (the "G Block") was licensed to Sprint as replacement spectrum for Sprint's operations that were being relocated from the 800 MHz band as a result of public safety rebanding.⁴ The 1915-1920 MHz band was designated for use by licensed AWS operations.⁵ In so doing, the Commission acknowledged that UTAM "must be fully and fairly reimbursed" by new licensees for the investments it made clearing the UPCS bands.⁶ Sprint, in fact, completed reimbursement of UTAM shortly after receiving its license, leaving a shortfall only with respect to the H Block.

³ Improving Public Safety Communications in the 800 MHz Band, Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channel, *Report and Order, Fourth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) ("800 MHz R&O"); Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720 (2004) ("AWS Sixth Report and Order").

⁴ 800 MHz R&O.

⁵ AWS Sixth Report and Order at 20740 ¶ 41.

⁶ *Id.* at 20745 ¶ 53.

II. UTAM SUPPORTS THE NOTICE’S PROPOSAL TO ENSURE UTAM RECEIVES FULL REIMBURSEMENT AFTER THE FIRST H BLOCK AUCTION.

The Notice proposes to require H block licensees to pay a *pro rata* amount of the 25 percent owed to UTAM based on the gross winning bids of the of the initial H Block auction—specifically, “that the reimbursement amount owed (“RN”) be determined by dividing the gross winning bid (“GWB”) 112 for an H Block license (i.e., an individual EA) by the sum of the gross winning bids for all H Block licenses won in the initial auction and then multiplying by \$12,629,857.”⁷ The FCC’s proposal also includes a contingency. In the unlikely event that licenses covering less than 40 percent of the population in the U.S. are awarded in the first auction, the FCC proposes that the winning bidders—in the first auction of this spectrum as well as subsequent auctions—will be required to timely pay UTAM their *pro rata* share calculated by dividing the population of the EA awarded at the auction by the total U.S. population and multiplying it by \$12,629,857.⁸ The Notice further proposes that winning bidders promptly pay UTAM the amount owed within 30 days of the grant of their long-form applications for the licensees.⁹ As discussed below, UTAM supports this proposal because it provides certainty of repayment in timely manner.

As the Commission notes, the NPRM proposal “would ensure that UTAM receives full reimbursement after the first auction.”¹⁰ As previously documented in other proceedings,

⁷ Notice at ¶ 58.

⁸ *Id.* at ¶ 59.

⁹ *Id.* at ¶ 61.

¹⁰ *Id.* at ¶ 59.

UTAM is currently—and has been—at a “net zero” balance for a considerable period of time.¹¹ In other words, the obligations owed by UTAM are precisely offset by the amounts due to UTAM as a result of the H Block auction,¹² and therefore until UTAM can cease operations, UTAM is an unnecessary administrative burden on the UPCS device manufacturers that must continue to support it. On that basis, UTAM strongly supports reimbursement in full as soon as possible, and payment after an initial auction would be ideal. Once UTAM receives the H Block payment, it will close down, thereby freeing its members from the administrative costs and processes associated with complying with UTAM requirements. The Commission’s proposed formula and requirements will ensure that UTAM can be reimbursed quickly and in full.

III. CONCLUSION

The Commission should expeditiously proceed with the auction of the H Block and require the winning bidders to promptly pay UTAM the amount owed as calculated by the Notice’s proposed formula.

Respectfully submitted,

By: _____/s/
Michael Stima
Managing Director

February 6, 2013

¹¹ Comments of UTAM, Inc., WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142 (filed May 18, 2012).

¹² UTAM, Inc. Biannual Report, GEN Docket No. 90-314 at 1-2 (filed Jan. 4, 2013).